

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | Facility ID No. 73340 |
| WNLB Radio, Inc. |) | NAL/Acct No.: MB-20041810105 |
| |) | FRN: 0002068484 |
| Licensee of FM Station WZBB(FM) |) | File No. BRH-20030602BAR |
| Stanleytown, Virginia |) | |

FORFEITURE ORDER

Adopted: February 16, 2010

Released: February 17, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to WNLB Radio, Inc. ("Licensee"), licensee of Station WZBB(FM), Stanleytown, Virginia ("Station"), for willful and repeated violations of Section 73.3526 of the Commission's Rules ("Rules").¹ The violations involve Licensee's failure to maintain the Station's public inspection file properly.

II. BACKGROUND

2. On June 2, 2003, Licensee filed an application to renew the Station's license.² Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526, has been placed in the station's public inspection file at the appropriate times. Licensee indicated "No" to that certification, attaching an Exhibit stating: "The licensee is unable to locate the issues/programs lists for the years 1996, 1997, and 1998. Otherwise, the file is complete."³ On, December 21, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of nine thousand dollars (\$9,000) to Licensee for willfully and repeatedly violating Section 73.3526 of the Rules, based on Licensee's admission that all issues/programs lists from 1996 through 1998 (a total of twelve lists), were missing from the Station's public inspection file.⁴ The staff noted that its determination was based not only on the length of time the public file was incomplete, but also on Licensee's lack of corrective action to prevent recurrence of the violation.

3. Licensee filed a response to the NAL ("Response") on January 19, 2005. In support of its Response, Licensee argues that the public file was not incomplete for the entire renewal period, but that the relevant issues/programs lists were only briefly missing from the file. It claims that its statement in the renewal application was intended to apprise the Commission of the current state of the public file, but was not intended to suggest that the earlier lists had never been in the file or that their subsequent misplacement

¹ 47 C.F.R. § 73.3526.

² File No. BRH-20030602BAR.

³ *Id.*, Exhibit 11.

⁴ *Letter to Peter Gutmann, Esq., from Peter H. Doyle, Chief, Audio Division, Media Bureau*, Ref. No. 1800B3-MAT (Dec. 21, 2004) (PN Report No. 45889).

persisted for a considerable length of time.⁵ Licensee includes the sworn statement of its President, William W. Geasey,⁶ who states that before filing its renewal application, the Station underwent a voluntary inspection in 2003 by the Virginia Association of Broadcasters in which no lapses were found. Mr. Geasey states that, given the successful 2003 inspection, “it would appear that [the 1996, 1997 and 1998 lists were missing] only for a brief period” preceding the June 2, 2003, renewal filing, and notes that the file was “otherwise...complete.”⁷ Mr. Geasey then explains that he has not been able to determine why the lists were lost, and has no reason to believe that any similar problem will arise again. As a corrective measure, Licensee states that it will maintain duplicate copies of all public file materials to be kept in a safe remote location to be used, if necessary, in the future. Licensee also points out that it has a twenty-five year history of broadcast operation, and has never been cited by the Commission previously. Licensee asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

4. Section 73.3526 of the Rules requires that certain items be retained in the public file, including quarterly issues/programs lists. We determine that Licensee willfully and repeatedly violated Section 73.3526(e)(12) of the Rules⁸ based on its admission that the 1996, 1997, and 1998 issues/programs lists were temporarily missing from the public inspection file at the time of its renewal application filing. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁹ Section 1.80 of the Rules,¹⁰ and the Commission’s *Forfeiture Policy Statement*.¹¹ In examining Licensee’s Response, Section 503(b) of the Act¹² and the other cited authority require that we take into account the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

5. We have examined Licensee’s Response pursuant to the statutory factors above and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we will reduce the proposed forfeiture. In so finding, we credit Licensee’s representation that the requisite issues/programs lists were generated and timely placed in the Station’s public inspection file, but subsequently were misplaced for a brief period of time. With respect to Licensee’s participation in a voluntary inspection in 2003 by its state broadcaster’s association, we will treat this as a “good faith” effort to comply with our rules, warranting a downward adjustment pursuant to Section 1.80 of our Rules.¹³ We also credit Licensee’s statement that it has taken corrective action to prevent future lapses. We note that Licensee’s history of compliance

⁵ Response at 2.

⁶ *Id.*, Attachment 1.

⁷ *Id.* at 2.

⁸ 47 C.F.R. § 73.3526(e)(12).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ See 47 C.F.R. § 1.80, Note to Paragraph (b)(9).

weighs in its favor. Under these circumstances, we reduce the \$9,000 forfeiture proposed against Licensee to \$1,000.¹⁴

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁵ that WNLB Radio, Inc., SHALL FORFEIT to the United States the sum of one thousand dollars (\$1,000) for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

8. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹⁶

9. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to WNLB Radio, Inc., 10899 Virginia Avenue, Bassett, Virginia 24055, and to its counsel, Peter Gutmann, Womble, Carlyle, Sandridge and Rice, PLLC, 1401 Eye Street, NW, Seventh Floor, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁴ Staff practice in cases where the Section 73.3526 violation has lasted less than one year (i.e., involved fewer than four missing issues/programs lists) has generally been to admonish the licensee rather than issue an NAL. *See, e.g., Letter to Eure Communications, Inc., WWWV(FM), Charlottesville, Virginia*, Ref. 1800B3-KV (MB Oct. 8, 2003). However, although it appears that the violation in this case was for a brief period of time, more than three issues/programs lists were misplaced and missing from the Station's public inspection file. An NAL, albeit reduced from that originally proposed, therefore is appropriate in this case. *See, e.g., Dick Broadcasting Company, of Tennessee*, Forfeiture Order, 23 FCC Rcd 8421, 8422 (MB 2008) (\$1,000 forfeiture appropriate when licensee generated and timely placed issues/programs lists into the station's public inspection file but subsequently misplaced them and the lists could neither be located nor reconstructed); *Brazos Valley Broadcasting, LLC*, Forfeiture Order, 21 FCC Rcd 6964, 6965 (MB 2006) (same).

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁶ *See* 47 C.F.R. § 1.1914.